IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.4122 OF 2007

P.C.Soft Business Automation Pvt. Ltd. ..Petitioner.
Vs.
Sandvik Asia Ltd. ..Respondent.

Ms.Candana Salgaonkar Padia, adv. for the Petitioner.

Mr.Sugandh Deshmukh, adv. for the Respondent.

CORAM : J.H.BHATIA, J.
DATE : JULY 6, 2007.

P.C.

1. Heard the learned counsel for the Parties.

2. Respondent/plaintiff filed application Exhibit 32 before the trial Court seeking leave to adduce secondary evidence in respect of certain documents. He also filed application Exhibit 33 seeking leave to produce original and xerox copies of certain documents. The respondent/plaintiff also gave notice Exhibit 35 to the defendant/petitioner to admit certain documents. After hearing the parties, the learned trial Court allowed application Exhibit 32 permitting the plaintiff to lead the secondary evidence of certain documents. He also allowed production of documents original as well as xerox copies and he also directed the defendant to give say as to whether the documents are admitted or not and the plaintiff was permitted to lead evidence

about the documents if not admitted by defendant. All these orders are challenged in the present writ petition.

3. After some discussion at bar, the learned counsel for the petitioner/defendant restricted her objection only to permission to adduce secondary evidence about certain documents. According to her, the plaintiff/respondent has not made out any case to lead the secondary evidence and the trial Court has also not given any reasons as to why the plaintiff/respondent was allowed to the lead the secondary evidence of certain documents. As the trial Court has not given any reasons as to why leave was granted to lead the secondary evidence, it can be presumed that the permission was granted on the basis of reasons given in the application. In paragraph 2 of the application Exhibit 32, the plaintiff/respondent contended "At this stage due to internal shifting of the record office, it is difficult for the plaintiff to produce originals, as the case may be, of each and every documents as the documents are in scattered manner and misplaced and thus the plaintiff has produced on record xerox copies of certain documents". It shows that because of the internal shifting of record office, original documents were in scattered manner and some of them may be misplaced and,

therefore, it was difficult for the plaintiff to produce original documents. Plaintiff has nowhere stated that any of these documents were destroyed or lost or he can not produce the same in reasonable time for any reason not arising from his own fault or neglect, as required under Section 65(c) of the Indian Evidence Act. The learned counsel for the respondent contended that the plaintiff/respondent is a big company and the documents are scattered in different departments. This can not be the ground to lead the secondary evidence. If the documents are in scattered position or they are lying with different departments or are misplaced for the time being, it is the responsibility of the respondent to make every endeavour to trace out documents, put them in proper order and place them before the Court. At the most he may seek reasonable time from the trial Court for this purpose.

4. Taking into consideration the reasons given by the plaintiff/respondent in application Ex.32 for leading the secondary evidence, I am satisfied that the respondent had failed to make out a case for leading secondary evidence as required under Section 65(c) and, therefore, this application could not have been granted.

5. In the result, the order passed by the trial Court, on Ex.32 permitting the plaintiffs to lead the secondary evidence of certain documents is hereby set aside. However, the plaintiff may be granted some reasonable time by the trial Court to trace out original documents and to produce the same during the trial. The learned counsel for the petitioner/defendant makes a statement that if such time is given and if the original documents are produced, no objection shall be taken by the defendants before the trial Court. In case the plaintiff after all reasonable search is unable to find and produce original documents, he shall be at liberty to file fresh application seeking leave to lead secondary evidence by making out a case for the same under Section 65(c) of the Evidence Act. The order passed on other applications need not be interfered.

6. With aforesaid directions, petition stands disposed off.

[J.H.BHATIA, J.]